

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Reginald Tweed and Jonathan Moses,)	
)	
Plaintiffs,)	ORDER
)	
vs.)	
)	
Timothy Schuetzle, et. al.,)	Case No. 1:06-cv-032
)	
Defendants.)	

On July 24, 2007, the Defendants filed a Motion to Amend Answer to include an affirmative defense that the “Plaintiffs’ claims based on Defendants’ response to the state habeas petition are barred by the doctrine of res judicata and collateral estoppel.” The court granted the Defendants’ motion in an order dated July 26, 2007.

On August 6, 2007, the Plaintiffs filed a Motion to Vacate Order. In addition to asserting that the Motion to Amend Answer was granted prematurely, they aver that the allowance of such an amendment is unduly prejudicial and will unduly delay final disposition of this matter. The Defendants filed a response in opposition to the Plaintiffs’ motion on August 10, 2007, stressing, inter alia, that their initial motion to amend was timely filed and that the time to conduct discovery has not closed, thus negating the Plaintiffs’ assertions.¹

Having reviewed the parties’ submissions, the court finds no cause for vacating its previous order granting the Defendants’ motion to amend. Given the posture of this case, the amendment to

¹The scheduling order provides that: (1) the deadline for filing motions to amend the pleadings is August 1, 2007; (2) the deadline for completing discovery is October 1, 2007; and the deadline for filing dispositive motions is November 1, 2007. (Docket No. 43).

the Defendants' answer is not unduly prejudicial and creates little to no risk of unduly delaying final disposition of this matter. Accordingly, the Plaintiffs' Motion to Vacate Order (Docket No. 62) is **DENIED.**

IT IS SO ORDERED.

Dated this 14th day of August, 2007.

/s/ Charles S. Miller, Jr.

Charles S. Miller, Jr.
United States Magistrate Judge